THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

Volume 12 SEPTEMBER-OCTOBER, 1961 Number 1

ETHICS IN THE JUDICIAL SYSTEM

. . . Judges, no less than lawyers, are prone to view the wider problems of ethics as matters beyond their proper ken. For, in the first place, the judge is apt, in this country at least, to bring to his task a lawyer's training and the views to which that training leads. The lack of moral doubts, which is so helpful to the lawyer in practice, is thus carried over to the bench. And this freedom from moral doubts is most surely induced and nourished by a lack of concern with ethics, for nothing so gravely threatens the moral dogmas by which we live as the study of ethics.

There is no doubt a second factor which leads judges away from the study of ethics. Judges want their conduct to be free not only from their own doubts, but also from the doubts of others. The judge is apt to feel that ethics is a risky affair, and that the less he has to do with questions about which men have argued for ages the less likely will people be to cast doubts upon the judgments he utters. The slot machine doctrine of the judge's function, which teaches that judgments emerge from judges as gum comes forth from a vending machine, implies that a judge's beliefs about ethics have nothing to do with his work on the bench. This doctrine offers much aid and comfort to judges in moments of social stress. There is no use in kicking at a slot machine. Complaints must be referred to the owners. Public protests against the things that judges do or say must be referred to the proper law making bodies of state or nation or, when these bodies refuse to take the blame, to the Founding Fathers, who, being dead, pay even less heed to public clamor than do living judges. Why, indeed, should any judge defend his judgments on grounds of ethics when it is so easy to take refuge from the shafts of moral protest by hiding behind the doctrine of the slot machine?

Ethics, shunned alike by lawyers and judges, looks today for friends among the students and teachers of law. But they are, in the main, too busy to be disturbed. Some of them are busy counting cases. Others are trying hard to find out where cases come from and where they go to when they leave the courtroom. There is a widespread feeling among legal scholars that until this task is finished it is too early to pass judgments of good and bad upon legal cases and legal doctrines. Those who take this view are not disturbed by the prospect that the legal cases and doctrines to which they have addressed their program of research will very likely die of old age long before the research is finished. What is perhaps of some weight in molding the currents of modern legal research is a belief that law can attain the prestige of science only by showing a thorough contempt for judgments of value. There is no room for ethics in the oldest and most advanced science, physics. . . .

From *THE LEGAL CONSCIENCE*
Selected Papers of Felix S. Cohen
Edited by Lucy Kramer Cohen
Foreword by Justice Felix Frankfurter
Introduction by Eugene V. Rostow
Yale University Press, Publishers

THE DECALOGUE JOURNAL

Published Quarterly by
THE DECALOGUE SOCIETY OF LAWYERS
180 W. Washington St. Chicago 2, Illinois
Telephone ANdover 3-6493

Volume 12 September-October, 1961 Number 1

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PRESIDENT APPOINTS SOCIETY COMMITTEE HEADS ACTIVE TERM PLANNED

The hopes of our new President Bernard E. Epton for a productive year are centered in the chairmen of the Society's committees the list of which follows.

Mr. Epton has expressed deep confidence in the integrity and competence of the men appointed by him to carry on the Society's chief activities in the profession and in its relationship to the community at large. "These men," said Mr. Epton, "are to supply the leadership that is to perpetuate the ideals of The Decalogue Society of Lawyers." The President stressed the need for the enlistment of the interest of the entire membership in the work of these committes and its participation in the labors ahead.

STANDING COMMITTEES, CHAIRMEN
1961-1962

Committees	*Chairmen*
Admiralty Law	Zeamore A. Ader
Appointment Book & Directory	Herbert H. Victor
Arbitration	Samuel Allen
Archives	Oscar M. Nudelman
Budget & Auditing	L. Louis Karton
Civic Affairs	John M. Weiner
Conservation	Judge Irving Landesman
Constitution Revision	David F. Silverzweig
The Decalogue Journal	Benjamin Weintroub
Family Law	Meyer Weinberg
Entertainment	Herbert A. Glieberman
Forum	Fred Lane
Golf Outing	Meyer C. Balin
Great Books	Oscar M. Nudelman Alec E. Weinrob
Hebrew University Fund	Nathan M. Cohen
House Committee	Michael Levin
Insurance	Herman B. Goldstein
Inter-American Bar	Esther O. Kegan
Inter-Bar	Meyer C. Balin
Lawyers Counseling	David Davidson
Legal Education	Elmer Gertz
Legislation	Louis Weingart
Membership	Marvin Juron
Merit Award	Marvin M. Victor
Placement & Employment	Michael Levin
Professional Relations	Herman B. Goldstein
Public Relations	L. Louis Karton
Women's Auxiliary Liaison	Esther O. Kegan
Younger Members	Estelle Linn

Bernard E. Epton Inaugurated As New President

Installation ceremonies inducting into office Bernard E. Epton were held at a dinner on June 14 at the Chicago Bar Association quarters, 29 So. La Salle Street. The affair was marked by a large attendance of members, their families and guests and of representatives of Bench and Bar who were profuse in their congratulations of Epton upon his accession to high office and who expressed their enthusiastic confidence in his leadership and ability to give the Decalogue Society of Lawyers an unsurpassed year of achievements in keeping with the finest tradition of our organization.

Past president Elmer Gertz was the recipient of a citation of commendation for his outstanding work as chairman of The Decalogue Legal Education committee.

Judge Abraham L. Marovitz was the installing officer. Member of our Board of Managers Marvin Juron, with the aid of several members of our society presented a musical comedy.

Other officers installed with Bernard E. Epton were: Reginald J. Holzer, first vice-president; Meyer C. Balin, second vice-president; Judge David Lefkovits, financial secretary, who held the same office some five years ago; Harry H. Malkin, treasurer; Michael Levin, executive secretary.

The following is our new president's address delivered on the occasion of his installation:

One of the pleasant features of the written speech is that any mistake in delivery or misplaced thought can be rectified and for that reason I am grateful to Ben Weintroub and The Decalogue Journal for the opportunity to greet my fellow-members of The Decalogue Society of Lawyers. I hope that, thus, members who were present during my maiden address will fully understand if there should be any slight discrepancies between my remarks on the evening of my installation and those which our editor has seen fit to print.

To say that I am not quite pleased with and not proud of my election as President to The Decalogue Society of Lawyers would be sheer nonsense. The Decalogue Society has long been a pillar in our community, and much as I appreciate the honor, equally important is my desire to see the Decalogue achieve even greater stature. This in itself would be quite a feat since it would be difficult to add to the achievements of Meyer Weinberg and Louis Karton. I would be remiss if, at this time, I did not make mention of the wonderful help and guidance given to me by both of my predecessors during their terms of office. They kept me fully advised of all of their activities, and if I am able to perform the job of president satisfactorily, it will be due almost entirely to the splendid examples that they have set.

BERNARD E. EPTON

It would be only part of the story, however, if I were to attribute to them only the position of esteem the Decalogue Society holds in the community. We have been fortunate indeed in having a succession of dedicated men, not only as presidents, but as officers and members of the board as well, and I sincerely hope that this administration will be no exception.

The Decalogue Society, however, is not composed of just officers and a board of managers and individual chairmen; rather, it is a potent force of 1,500 lawyers dedicated to that which is good in our way of life. Certainly, if all of these lawyers failed to participate in or assist the administration, the absence of progress, the absence of achievement, could easily be laid at their door. Unfortunately, however, if they are inactive, if they are apathetic, then that particular charge can be directed to the president and his administration.

Although the members of the Decalogue Society, by virtue of our Constitution, are limited to attorneys of the Jewish faith, this does not for a moment

presuppose that our activities as a bar association are in any way limited. We have consistently attempted to complement the work of our sister bars, and whether the association be on a state-wide basis, on a local basis, or a similar ethnic group, we have consistently stood side by side in all of their efforts to further not only the legal profession, but all humanity, regardless of creed or color.

It would be presumptuous of me to explore the meaning of the word "Decalogue," but our very title carries with it the thought that our concern is not only for the legal profession, or the Jewish lawyer, but rather, to advance a standard of life, a course of conduct which reflects credit upon us all and which harkens back to the days of Moses. It is so trite, but nonetheless true, that any club or association gives to its members in the same proportion as it receives. Our Society has grown in stature because of the untiring efforts of so many of our members; but there is still much to be done to adequately serve not only our members and the legal profession, but all of humanity as well.

Today, as perhaps never before in history, the contributions of our profession may well be the difference for our descendants between a heartening future and no future at all. The Decalogue Society has an impressive list of achievements to its credit, and with your help this administration will add to that record. It is our hope that a year from now, when I shall have the privilege of recounting the activities of the Decalogue Society for the preceding year, such recounting will be done with a sense of pride, a sense of satisfaction, and in a spirit of thankfulness which all of us can share.

Bernard E. Epton Biographical Sketch

Bernard E. Epton was born in Chicago where he attended O'Keeffe Grammar School, Hyde Park High School, Morgan Military Academy, The University of Chicago and DePaul Law School. He is forty years old.

With the beginning of World War II, he enlisted in the Air Force rising from the rank of private to a captaincy in the Eighth Air Force. He completed twenty-five heavy bombardment missions over Europe in the course of which activities he received twelve awards for heroism in action, including a personal citation from General James Doolittle.

He is an immediate past president of the South Shore Chamber of Commerce, a former member of the Board of Governors of the young Republicans of Illinois, member of the United Republican Fund of Illinois, the Chicago Council on Foreign Relations and South Shore O'Keeffe Conservation Community Council. He is a member of the American Legion, Veterans of Foreign Wars, Jewish War Veterans, and Judge Advocate of the Military Order of World Wars.

He is a member and former director and vice-president of the South Side Hebrew Congregation, a member of the South Shore Temple, South Side Lions Club, Hyde Park High School, O'Keeffe P.T.A., B'nai B'rith, The Zionist Organization of America, and the Y.M.C.A.

He is also a life member of The University of Chicago Alumni Association and a life member of the Chicago Historical Society. His communal interests include The Red Cross, Girl Scouts, the Heart Fund of Chicago and the American Cancer Society.

He is a member of the law firm of Epton, Scott, McCarthy & Bohling, in the Board of Trade Building, 141 W. Jackson Boulevard.

He resides with his wife Audrey and four children, Teri, Jeffrey, Mark and Dale at 6941 Oglesby—in the very neighborhood where he was born, educated, and worked all his life.

DECALOGUE "TOAST TO THE BENCH" ON DECEMBER 14th

The Decalogue Society of Lawyers will be host to all Cook County judges and the Federal Judiciary at its annual cocktail party, "Toast to the Bench," on December 14th, at 4 P.M. at the Covenant Club, 10 North Dearborn Street.

DAVID J. SHIPMAN REELECTED

Member David J. Shipman, master in chancery, United States District Court, was reelected to a second term as president of the City Club of Chicago, a fifty nine year old civic organization.

Shipman was also reelected as secretary of the Seventh Circuit Bar Association. His offices are at 135 So. La Salle Street.

JUSTICE HENRY L. BURMAN HONORED

Member Justice Henry L. Burman of the Illinois Appellate Court was presented with a citation for outstanding service to his alma mater by the Chicago Kent College of Law alumni association. Justice Burman is the outgoing president of the association.

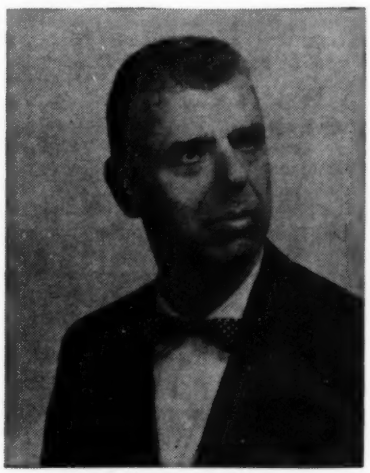
DORDEK WATER SAFETY CHAIRMAN

Member Israel Dordek has been named Water Safety chairman for the Chicago Red Cross. As water chairman Dordek will supervise Red Cross efforts to make all Chicagoans water safety conscious by offering free instructions on swimming, life saving and small craft cooperation. Dordek has been a volunteer Red Cross safety instructor since 1942. His offices are at 33 No. La Salle Street.

Notes on Section 301(a) of the Taft-Hartley Law

By EUGENE COTTON

Member Eugene Cotton is a graduate of the Columbia University Law School where he was a member of the Board of Editors of the Law Review. He is a member of the bar of New York and of Illinois, and his background in labor relations includes four years as attorney for the New York State Labor Relations Board, seven years as Assistant General Counsel of CIO and thirteen years in private practice representing national and local labor organizations. He is a member of the firm of Cotton, Fruchtman & Watt.



EUGENE COTTON

It is a commonplace to hail the capacity of our judicial system, even in the absence of statutory development, to make of our legal doctrine a living and growing force rather than a body of static dogma. Labor law, perhaps more than any other, offers constant evidence of this capacity for evolution through judicial adjudication. The legal practitioners specializing in labor, whether representing management or unions, may have their doubts and disagreements as to whether the judicial process in which they find themselves playing a role is truly evolutionary, with a consistent discernible trend, or whether it is a process of blind thrashing about with only freakish mutations as the discernible product. They will agree, however, that they are accustomed to operation in an area of the law in which the fixed doctrine is the rare—and often welcome—exception.

Because of this fluidity, labor law may offer to the thoughtful attorney who has no occasion to be involved personally in labor relations matters some interesting and provocative material for consideration of the judicial and legislative processes themselves. One of the most active areas of labor litigation of recent years, for example, has been that which concerns itself with problems of the interrelationship of federal and state power. While modern federal statutory concern with labor relations is normally traced from the Norris LaGuardia Anti-Injunction Act[1] of 1932, that statute is not so much an affirmative assertion of federal interest as a limitation on federal court power felt to have been theretofore too freely exercised by injunction in labor disputes. It is with the story of Section 7 of the NRA, the Wagner Act[2] of 1935, the Taft-Hartley Act[3] of 1947 and the Landrum-Griffin Act[4] of 1959 that we come to the era of affirmative federal regulation, direction and control, erecting the framework for a broad and continuing process of realignment and redistribution of responsibility as between federal and state governments in the regulation of labor relations.

It is neither possible nor intended to attempt within the limits of this brief article to retell that story to date or even to analyze the stage to which it has thus far proceeded—it is a story which is still, and probably always will be, unfinished. It may, however, be of interest to the non-specialist, to review in a brief and informal way, one small but fascinating subdivision of one not-so-small chapter in that story. The chapter is the judicial application of the doctrine of federal pre-emption in determining what areas of action were left to the states in the wake of the sweep of the federal statutes. The small sub-division concerns the federal vs. state implications of Section 301(a) of the Taft-Hartley Act[5] of 1947.

The story is interesting because it illustrates the extent to which apparently minor—and perhaps thoughtless—tinkering with one facet of our intricate federal-state complex, can produce ever-broadening, and one suspects not at all foreseen, consequences in a chain-reaction of legal doctrine acting upon legal doctrine.

Section 301(a) offers a deceptive simplicity on its face: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."[6]

A legislative history which the U. S. Supreme Court was later to characterize as "somewhat cloudy and confusing"[7] reveals as an oft-repeated impelling force a general concept that suits against unions in state courts posed difficulties primarily of a procedural nature (by reason of the fact that unions are usually unincorporated associations).[8] What is certainly unclear is whether any of the sage legislators voting for Section 301(a) had considered carefully the language of Article III, Sec. 2, of the U. S. Constitution specifying the scope of federal judicial power as extending to:

". . . all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and

Treaties made, or which shall be made, under their Authority; — to Controversies . . . between Citizens of different States. . . ."

It was all very well for the Congress to declare so forthrightly that suits for violation of certain types of contracts might be brought in the federal district courts, but having eliminated diversity of citizenship as a basis for the court's jurisdiction, under which of the remaining aspects of the constitutionally defined scope of federal and judicial power can this statutory conferral of jurisdiction on the federal courts be founded? Obviously only the category of "Cases . . . arising under . . . the Laws of the United States" is available—but if so, under what "law of the United States" does a suit for violation of contract arise? Other than Section 301(a) itself, no other U. S. statute affirmatively declares or creates substantive federal rights enforceable in a Section 301(a) suit. Thus the Courts were immediately faced with a choice: either to declare Section 301(a) unconstitutional (in the face of the highly charged atmosphere which had produced the entire Taft-Hartley Act—and with the widely-believed dogmas because of the atmosphere generated by the supporters of the Act, that a court so ruling would be unreasonably returning the nation to a savage jungle of labor contract breaches without remedy) or to find within the simple jurisdictional language of Section 301(a) an entirely new body of federal substantive law creating federal rights and embodying federal doctrines of law.

What may very well have been a typical legislative "let's-do-something-about-it; let's-pass-a-law" reaction thus opened a hornet's nest of troublesome constitutional problems. It is not necessary here to review the numerous lower court decisions and law journal articles to which the dilemma gave rise. Most courts were content to find in the brief language of Section 301(a) federal substantive rights; some sought comfort in analogies to special bankruptcy law doctrines and others in analogies to cases involving federal incorporation[9]. It is ironic that while in most of the earliest cases it was the union defendant which challenged the constitutionality of the statute, the Supreme Court decisions in which the issue was debated and resolved arose on suits brought by union plaintiffs with the employer-defendants challenging the validity of this section of the Taft-Hartley Act.

In 1955, when the section first reached the Supreme Court in the *Westinghouse*[10] case, Mr. Justice Frankfurter, writing for three of the majority of six (of eight participating justices) expressed grave doubts on the constitutional question, but succeeded in avoiding the problem by a statutory construction which removed the case before the court from the coverage of the statute.

It was in the truly landmark 1957 decision in *Textile Workers v. Lincoln Mills of Alabama*[11] that, with Mr. Justice Frankfurter alone dissenting, the Court finally found, in the innocent appearing capsule of language which Section 301(a) presents on its surface, an actively germinating seed from which, with judicial nurture, a veritable forest may be expected to grow. Having concluded that Section 301(a) was more than merely jurisdictional, but did in fact create substantive federal rights, the Court went on to answer the inevitable question as to the nature, scope and source of definition of these rights:

"The question then is, what is the substantive law to be applied in suits under §301(a)? We conclude that the substantive law to apply in suits under §301(a) is federal law which the courts must fashion from the policy of our national labor laws . . . The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem . . . Federal interpretation of the federal law will govern, not state law . . . But state law, if compatible with the purpose of §301, may be resorted to in order to find the rule that will best effectuate the federal policy . . . . Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights."

The *Lincoln Mills* decision thus opened vistas—described in the quoted language of the Court itself—of vast, uncharted areas of doctrine to be formulated by the federal courts. Unmentioned in the majority opinion were other consequential ramifications which for years and perhaps decades to come will be in the process of exploration in judicial decision and law journal analysis. Mr. Justice Frankfurter, in a lengthy and scholarly dissent carried to a conclusion the doubts he expressed earlier in *Westinghouse* as to whether the constitutionality of Section 301(a) could—or should—be saved by a search for substantive implications in its language. It was in his earlier comments in the *Westinghouse* decision that he spelled out some of the consequences for the relationship of federal and state law which he foresaw as the result of a decision such as that which the Court later reached in *Lincoln Mills:*

"But assuming that we would be justified in proceeding further, the suggestion that the section permits the federal courts to work out without a federal code governing collective bargaining contracts does not free us from difficulties.

"Such a task would involve the federal courts in multiplying problems which could not be solved without disclosing that Congress never intended to raise them. Application of a body of federal common law would inevitably lead to one of the following incongruities: (1) conflict in federal and state court interpretations of collective bargaining agreements; (2) displacement of state law by federal law in state courts not only in actions between union and employer but in all actions regarding collective bargaining agreements; or (3) exclusion of state court jurisdiction over these matters . . ." [12]

As a matter of fact, it is extremely doubtful whether the Court has not already eliminated Justice Frankfurter's first alternative. The Supreme Court's concern with doctrines of federal pre-emption in the field of labor relations, both before and since *Lincoln Mills* has revolved primarily about the impact of the National Labor Relations Act[13] and its definitions of permitted and proscribed conduct on the part of employer and union. From *Allen Bradley Local No. 1111 v. Wisconsin Employment Relations Board*[14] in 1942, and a number of subsequent decisions involving the impingement upon federal policy of actions of state labor relations, boards[15], through cases such as *Garner v. Teamsters Union*[16], (1953), *United Construction Workers, UMW v. Laburnum Construction Corp.*[17] (1954), *UAW v. Russell*[18] (1958); *IAM v. Gonzales*[19] (1958), and *San Diego Building Trades Council v. Garman*[20] (1959), the Court has attempted to define the area of action left to the state in labor matters.

In *Garner* in 1953 the Court said:

"The National Labor Management Relations Act, as we have before pointed out, leaves much to the states,

though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible." [21]

In that search the Court has analyzed the nature and scope of the federal action, defined in the National Labor Relations Act and exercised through the NLRB, with respect to the specific conduct over which, in the various cases before the Court, state jurisdiction was asserted. This has produced areas of inclusion or exclusion, guided by considerations such as those expressed in *Garman* in 1959:

"Our concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered . . . . Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme." [22]

Once it has been determined, however, that Section 301(a) has created a substantive federal law governing the collective bargaining agreements, it is difficult to see any delineation of areas of inclusion or exclusion based on the scope of the federal action. It is hard to visualize any independent residual power in the state courts to enforce state, as opposed to federal, substantive doctrine in this field, assuming that the state courts have retained jurisdiction, concurrent with the federal courts, over the subject matter. Specifically, for example, now that the Supreme Court, in the *Lincoln Mills* and subsequent decisions,[23] has declared that provisions in collective bargaining agreements for arbitration of future controversies over application and interpretation of the agreement are enforceable in federal courts as a matter of substantive federal law, does not the doctrine of federal pre-emption decree that the state courts of Illinois, despite prior state rulings denying the enforceability of agreements to arbitrate future controversies, are required to apply the now-established federal rule in labor contract cases?

In one case,[24] the Supreme Court has already declared that a State anti-trust law may not be applied to outlaw provisions of a collective bargaining agreement governing matters not barred by federal law.

Whether the state courts retain concurrent jurisdiction, although required to apply federal law, was considered a few months after *Lincoln Mills* by the California Supreme Court, which concluded:

"It does not necessarily follow from a decision that federal law governs the rights of the parties that state courts are ousted of jurisdiction to enforce those rights . . . .

"Section 301 does not expressly exclude state courts . . .

"State courts therefore have concurrent jurisdiction with federal courts over actions that can be brought in the federal courts under Section 301." [25]

The California Court went on, perhaps with tongue in cheek, to point out that while the state courts must apply the federal law, "What the substantive federal law of collective bargaining agreements is we cannot now know." Therefore, said the Court, "Until it is elaborated by the federal courts we assume it does not differ significantly from our own law."

The California Court thus pointed up a dilemma which will face state courts for years to come, assuming that the state courts have jurisdiction at all. In the absence of a body of federal court doctrine, each state court is free to "interpret" federal law with few if any guideposts. Presumably, the expansion of the Supreme Court's powers of review, which will now encompass decisions of the state courts in this new area of "federal question," may be expected over many years to develop a measure of uniformity.

A procedural implication flowing from *Lincoln Mills* was emphasized two years later in a Connecticut District Court decision sustaining the removal to the federal court of a suit filed in the state court based on a collective bargaining agreement:

"If, in dealing with cases of this kind, it were to be held that state and federal jurisdictions overlapped and that applications could be made to either tribunal to apply its own law, an unnecessary jumble would result. Moreover, a controversy might well be determined by the relative fleetness of foot of the party running to the county courthouse for the application of state law as against the alacrity of the other party seeking to invoke federal law in the federal court . . . .

"Even though the Company may have had in mind in making its application that it was asserting a state given right, it was in reality relying upon federal law in an area in which Congress has pre-empted the field.

"Thus a suit of this kind may remain in the state courts for the application of federal law if both parties are desirous of having it heard there; but either party has the power to effect a removal to the federal court." [26]

And there we have it—all the result of the few magic lines of Section 301(a): no state law and possibly no state court jurisdiction but at the very least a clear right of removal if state court jurisdiction is invoked.

This is not the full story either in breadth or in detail. There has been a multitude of decisions and discussions, and more appear daily. There are a host of other questions and problems. An intriguing one on which to close our article, because it brings us back to the start, is: When a state court action for damages and injunction, against a strike allegedly in violation of a collective bargaining agreement, is removed to a federal court because Section 301(a) has now conferred jurisdiction of suits for violation of such agreement upon federal courts, what is the effect of the Norris LaGuardia Anti-Injunction Act which, way back in 1932, declared that federal courts do not have jurisdiction to issue injunctions against peaceful conduct, such as striking and picketing, in labor disputes?

A few lines buried in a lengthy 1947 enactment have been construed, a decade later, in order to save their constitutionality, in a manner which may accomplish the demise of all state law on the interpretation, application and enforcement of collective bargaining agreements (other than those in strictly intra-state enterprises) and the gradual erection, in the years ahead, of a structure of federal doctrine, judicially evolved. Those groups which are generally most vehement in their expressions of fear of expanding federal operation in some fields (e.g. education, welfare) are probably not in a position to declaim very loudly on the implications of the tale of Section 301(a), primarily because it is usually these same groups which have pressed for expanded federal controls over labor unions in the same Taft-Hartley law which contained Section 301 and in the subsequent Landrum-Griffin Act. From all points of view, indeed, the eventual federal uniformity in the interpretation of collective bargaining agreements may—and perhaps quite predictably will—be desirable. We cannot help suggesting, however, that the story is a commentary on the legislative process—and that a lawyer from Mars, on reviewing the contents of Section 301(a) might conclude that this is an unfortunate way to run a federal-state relationship.

(*for footnotes see next page*)

JEWISH NATIONAL FUND HONORS CONGRESSMAN YATES

LABOR SECRETARY ARTHUR J. GOLDBERG PRINCIPAL SPEAKER

Member Congressman Sidney R. Yates of the ninth Illinois district will be the guest of honor at a "Salute to Congressman Yates Dinner" arranged by the Jewish National Fund Council of Chicago, on Sunday September 17 at the Morrison Hotel. Member Secretary of Labor Arthur J. Goldberg will deliver the principal address. On the occasion of the dinner it will be formally announced that a giant forest will be established in the hills of Jerusalem to bear Congressman Yates' name.

Samuel H. Shapiro, Lieutenant Governor of Illinois, is chairman of the affair.

Member William J. Robinson is president of the Jewish National Fund Council, Chicago.

FOOTNOTES

1. 47 Stat. 70, 29 U.S.C. Sec. 101.
2. Act of July 5, 1935, C. 372, 74th Cong., 1st Sess., 49 Stat. 449.
3. Act of June 23, 1947, C. 120, 80th Cong., 1st Sess., 61 Stat. 136.
4. Act of September 14, 1959, P. L. 86-257, 86th Cong., 1st Sess.
5. 29 U.S.C. Sec. 185.
6. Ibid.
7. *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U. S. 448 (1957).
8. For a detailed review of the legislative history of Section 301(a) see Appendix to dissenting opinion of Mr. Justice Frankfurter in *Textile Workers Union of America v. Lincoln Mills of Alabama, supra.*
9. A listing of the "discordant answers" given by the lower federal courts appears in footnote 26 of the Supreme Court's opinion in *Ass'n. of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437 (1955). This list is supplemented by footnotes 1 and 2 of the Court's opinion in the *Lincoln Mills* decision.
10. *Ass'n. of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437 (1955).
11. 353 U. S. 448 (1957).
12. 348 U.S. at 454-455.
13. 29 U.S.C. Secs. 151-168.
14. 315 U.S. 740 (1942).
15. e.g. *UAW v. O'Brien*, 339 U.S. 454; *Plankinton Packing Co. v. Wisconsin Board*, 338 U.S. 953; *Auto Workers v. Wisconsin Board*, 351 U.S. 266; *Amalg. Ass'n. v. Wisconsin Board*, 340 U.S. 383; *Bethlehem Steel Co. v. New York Board*, 330 U.S. 767.
16. 346 U. S. 485 (1953).
17. 347 U. S. 656 (1954).
18. 356 U. S. 634 (1958).
19. 356 U. S. 617 (1958).
20. 359 U. S. 236 (1959).
21. 346 U. S. at 488.
22. 359 U. S. at 246-247.
23. *United Steelworkers of America v. American Manufacturing Co.*, 363 U. S. 564; *United Steelworkers of America v. Warrior and Gulf Navigation Co.*, 363 U. S. 574; *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U. S. 593.
24. *Teamsters Local 24 v. Oliver*, 358 U. S. 283 (1959).
25. *McCarroll v. Los Angeles County District Council of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322 (1957).
26. *Ingraham Company v. Local 260, I.U.E.*, 171 F. Supp. 103 (1959).

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THE SOVIET BAR*

By ALBERT C. MALONE, JR.

Condensed by Paul G. Annes

Paul G. Annes is a past president of The Decalogue Society of Lawyers and a frequent lecturer and writer on legal subjects.

Major Albert C. Malone, Jr. is with the Intelligence Division Headquarters, U. S. Army, Europe.

Private practice as understood in the West does not exist in the Soviet Union. All practitioners are members of legal collectives established by government decree and administered by government agencies, collectively called "Advokatura," its structure and duties set out in the "Decree Concerning the Advokatura."—It should be noted that the Advokatura includes a small group of lawyers employed on a full time basis as legal advisers to state industrial agencies, not engaged in criminal prosecution or other types of courtroom representation of the Soviet State.—(The latter group resembles the various state and federal attorneys, offices and departments of justice in the United States and is known collectively as the Procuracy). A member of the Advokatura is limited in his practice in many ways: thus, he is not free to accept or reject causes; to set fees; to handle matters entrusted to him as he sees fit.

The purpose of this article is to examine the social and professional status of the lawyer as it was in the earlier periods of the Soviet State and as it is today. A Russian Bar did not exist prior to the judicial reforms of 1864. Thereafter each candidate for the Bar was required to have a legal education followed by five years of apprenticeship with an established attorney. By and large, although with notable exceptions, Russian advocates towards the end of the nineteenth and the beginning of the twentieth century were conservative in their political affiliations. It is not surprising, therefore, that the first steps of the Communist regime with reference to courts and lawyers were very far reaching. The decree of November 24th, 1917 in effect abolished all legal institutions, including the Advokatura; everyone became a lawyer. The result was so chaotic that by February, 1918, the Advokatura was re-established. Thereafter various additional decrees were issued, the cumulative effect of which was to re-establish chaos in the legal system and profession. It was not until the New Economic Policy of 1922 that remedial action was taken. This brought a temporary period of some semblance to an independent Bar, with the Communist Party nevertheless continuing to control the supposedly free organization of advocates. This period terminated in 1928, followed by about five years of transformation back into a collective system of legal practice in line with the general trend during that period of collectivization of the Soviet State. Then came the time of the purges (1935-1939) when the operations of the Advokatura were virtually paralyzed. In the latter year there was passed the "Act Concerning the Advokatura" which established the structure of the Advokatura and its functions as they exist today. World War II postponed its effective implementation until the end of hostilities.

PAUL G. ANNES

The Advokatura, as thus re-established, became a "voluntary" association of lawyers, organized as a part of the Ministry of Justice of the Soviet Union and of the corresponding ministries of its political subdivisions. In each of these subdivisions there was created a Collegium of advocates for the purpose of providing private legal service to the population. Subject to the general supervision of the Collegium by the Ministry of Justice, they are self-governing, regulating admissions, locations of the legal collectives, appointment of their managers, and some disciplinary proceedings. Contrary to the earlier requirements, formal legal education is now supposedly mandatory for the members.

The operational system is quite simple. One needing legal advice visits the legal collective of his choice, with the right to ask for any lawyer on the

*An abbreviated condensation of a major contribution to the subject, published by the Cornell Law Quarterly (Vol. 46, No. 2, Winter 1961); with the permission of the author and the Cornell Law Quarterly.

staff—if no one in particular is asked for, the case is assigned to one of the lawyers on duty. Essentially, the lawyer to whom a case is assigned bears the responsibility of the assignment. Fees are paid by the client into the general treasury of the office according to a uniform list of approved fees by the Ministry of Justice. At the end of each month, each lawyer renders a bill for services to the office; he is paid on the basis of his month's work. A certain amount of the gross income—in Leningrad in 1958, 29.5 percent—is deducted for the expenses of the Collegium, office maintenance, etc. There is competition between the members of the Collective to handle the more lucrative cases. Although it is unlawful to accept fees on a private basis, the practice of "Mikst," the payment of an additional secret fee, is wide-spread.

The changes that have taken place in the Soviet Advokatura since 1946 have been not so much of function as of public attitude. Until Stalin's death in 1953, the Advokatura while not persecuted as such, nor purged, was simply ignored as an institution. Available material published in the Soviet Union since 1953 indicate a trend to self assertion on the part of the advocates. Recently the chairman of the Moscow Collegium of Advocates wrote that "the view of the Advokatura has sharply altered and today advocates in general are not only professional jurists but are also social-political figures." Such a description carries within it its own contradiction in terms, the necessity for the acceptance on the one hand of the policies of the Soviet government without dispute or protest, and at the same time fulfilling the mission of partisan advocacy, whether or not this may run contrary to government policy. And there is the further fact that the advocates are themselves employees of the government. A sampling of the more recent legal literature in Soviet Russia reveals a wide range of views, the majority honoring both concepts without any particular effort to reconcile them. The majority of writers express a "middle-of-the-road" approach: in the words of an editorial in one legal journal:

> The Soviet advocate is an active social figure with direct responsibility for inclusion in his work the strengthening of socialist legality, the improvement of court administration and the recognition of its authority, the rendering of legal aid to citizens and defense of their rights and interests.

The conclusion as to the present status of the Advokatura would appear to be that it is subject to frequent and sudden changes depending upon the political situation of the country. The most favorable sign is that advocates are at least beginning to speak up and that there is an apparent effort to popularize the Advokatura in publications of general circulation. From this it should not be assumed, however, that Soviet advocates are free to develop into a social force comparable to lawyers in the western world. As in every other phase of Soviet life, the Communist Party wholly controls the Advokatura. One of the encouraging signs of progress in recent years has been the reappearance of articles concerning the Advokatura in professional journals. The problem that has generated the most comment has been that of raising the standards of performance of the Advokatura; the necessity of increasing the professional competence of the advocates; the need for amendment of the 1939 statute concerning the Advokatura and suggested changes. In one field the advocates have recently achieved an improvement in their position, a change in the criminal code allowing defense counsel to participate fully in the case as soon as the investigation has commenced, with access to all materials utilized in the investigation—formerly participation was permitted only at the trial itself. This achievement cannot be credited to the Advokatura; it came about mainly through the work of law professors who had urged such a change for about fifteen years.

The most detailed discussion in Soviet legal literature has had to do with the method of distribution of income among the members of the legal collectives. It appears that many offices have greatly changed the basic system already described in this article and many suggestions for further revision have been made. Many schemes have been proposed to solve the so-called "evils" of client solicitation, lack of objectivity in the conduct of the cases, servility before judges, etc. There have been proposals for a guaranteed minimum wage with periodic salary increases; similarly, suggestions for reducing the wide differences in the income of advocates. It may be stated that although the minimum salary has been generally raised, the maximum earning capacity has been severely limited. A survey in the city of Rostov in 1958 showed a salary scale of 680 to 1700 rubles as compared to a previous range of 300 to more than 2000 rubles a month.

The subject of legal education in the Soviet Union has become of increasing interest following the introduction of a new system of education in January, 1959, which was designed by the government in an attempt to create a new labor pool and a loyal intelligentsia. In 1957-1958 there were 12,000 graduates and about 36,000 students enrolled in 23 faculties of law in various state universities and 4 special legal institutions. The latter figure includes both day and evening students and those students, representing the majority, who studied by means of correspondence courses. The large majority of the members of the Advokatura had possessed law degrees. Under the new system, the first two years of university work in the future are to be completed

in the evening. The students will be employed in industry on a full-time basis during the day. Upon completion of the first two years, a student *may* be transferred to the day sessions without a labor requirement; but this privilege will be primarily applicable in the scientific fields. Clearly, legal education in the Soviet Union occupies a secondary position to the sciences and may be expected to be conducted more and more on a part-time basis in the future.

The advocates themselves have had little to say concerning legal education at the university level, most of the discussion dealing with the system of apprenticeship utilized by the various Collegiums. This system was in effect prior to the War and remains substantially unchanged. The law school graduate, upon his admission to the Advokatura by the Ministry of Justice, becomes a second-class apprentice for a period of one year. After that he becomes a first-stage apprentice with more independence in the handling of cases assigned to him. At the end of this second year, he may become a full member of the Advokatura. In some areas the period is only one year or less, and in a few more remote areas it does not exist at all. The writers on this question have generally concentrated on two problems—the unwillingness of the advocates to expend the time necessary to assist the apprentices and the failure of the apprentices themselves to improve their qualifications by preparing for advanced degrees. Nothing has been written, however, about a more basic problem—how to make a career among the Advokatura more attractive to young lawyers. Indeed fewer and fewer are joining the Advokatura. The way to remedy this problem is to increase the prestige of the Advokatura. As to this there are conflicting opinions by commentators outside of the Soviet Union. Perhaps the more accurate assessment is that the Advokatura has been granted some relief from an enforced state of apathy and inactivity and is cautiously trying to improve its status; it is too early to predict the eventual result. Some progress has been made and advocates generally enjoy more respect and social prestige than they did not too long ago. Any further progress must, however, finally come up against the fact of the Communist Party, which maintains a rigid control over the Advokatura at all times. Therefore further developments must depend on what the Party considers politically expedient at any given time. While observing that certain agreeable changes have been made, it is nevertheless safe to conclude only that the present political climate seems conducive to further progress.

The writer of this condensation acknowledges with appreciation and respect Major Malone's fine contribution, requiring very considerable research among original sources in the Russian language.

Land Trust Council Elects Irwin A. Goodman

Member Irwin A. Goodman, vice-president and trust officer of the Exchange National Bank of Chicago, was elected president of the Land Trust Council of Illinois for the coming year. The Land Trust Council is an association comprised of forty-two banks in Chicago and surrounding areas. The purpose of the Council is to create a forum for exchange of ideas among corporate fiduciaries interested in land trusts to work as one body for better public understanding of problems involved and to encourage the proper use of the land trust. Illinois was the originator of land trusts and the majority of such trusts are located in Chicago and its environs.

Affiliated with the trust departments of Chicago banks for over twenty-five years, Goodman brings to his post a vast amount of banking and financial experience.

The following were elected officers of the Council: Harold Tollkuenn, Pioneer Trust and Savings Bank, vice-president; Raymond C. McCurdy, American National Bank and Trust Company of Chicago, treasurer; Corinne Bek, Cosmopolitan National Bank of Chicago, secretary.

Members of the executive committee: E. Stanley Enlund, Sears Bank and Trust Company; Edward P. Gannon, Pullman Trust and Savings Bank; Alfred E. Gallo, The Cosmopolitan National Bank of Chicago; William B. Higginbotham, La Salle National Bank; Arthur H. Morstadt, American National Bank and Trust Company of Chicago; Frank J. Murphy, Chicago City Bank and Trust Company.

From Estelle Linn, Chairman Younger Members Committee

The support of all the members of The Decalogue Society of Lawyers is necessary if the Lawyers Referral Service which will begin operations this Fall is to be a success. The object of this service is to bring together established attorneys, who have overflow work or, work which they find financially unrewarding for them to handle, and the younger lawyer who has more time than clients who would benefit from the opportunity of handling some of such matters, both for income and experience. Your support is solicited in replying to the mailing you will receive shortly on behalf of the Lawyers Referral Service.

A "kick off" cocktail party at which details pertaining to the above project will be discussed, as well as other plans on the agenda of the Younger Members committee, is scheduled for Wednesday September 27th from 4:30 to 6 P.M. Location of meeting place will be announced shortly.

Reminiscences and Reflections Justice U. S. Schwartz . . .

Below is an address by member Ulysses S. Schwartz, Justice of the Illinois Appellate Court, delivered at the Chicago Bar Association quarters on the occasion of his acceptance of the Thau Epsilon Rho legal fraternity's Public Service Award for 1960.

The event also marked the fiftieth year of the Justice's membership in the Illinois Bar.

. . . On the 50th anniversary of his law class, Justice Holmes described what should be a reviewing judge's aim —to hammer out as solid and compact a piece of work as one can; to try to make it first-rate; and to leave it *unadvertised.* It is a noble ideal—no vanity allowed. But I recall that the great Justice would be the last to deny his own vanity. That erect bearing, that bristling moustache bespoke a man who loved esteem. So, I freely admit that I am deeply moved.

Emerging from the monastery where we ply our trade, it is good to know that those who look upon our work like it. I shall cherish this award, for in times when I may have doubts, it will say to me "Well done." What more could one ask for? Keats lamented that he would die:

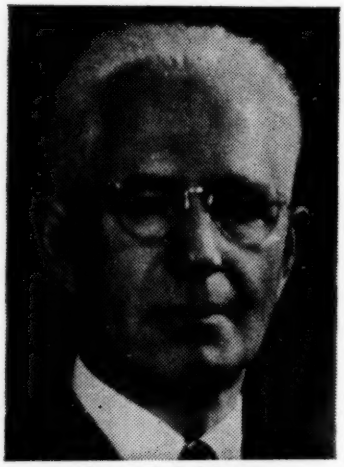
Before high-piled books in charactry
Hold like rich garners the full ripened grain.

If the time should come when I feel bad because I may not see books, piled high with further opinions, I shall look at the plaque and be cheered.

After your committee called upon me, I sat and mused, recalling events of fifty years ago or thereabouts. The first thought that came to me was a parody:

Fifty years are not enough
To master all that legal stuff.

Strangely, the cases I recalled were criminal ones, for I tried only a few, and those when I first came to the bar. One, which reveals some of the many changes in the law, was the defense of a boy charged with armed burglary. I visited the boy, Charlie, in his cell in the old jail on the near North side. He was 19 or 20 years old, dark-haired, dark-eyed, with the features of a poet. He assured me he knew nothing about the robbery. "Well, where were you that night?" He couldn't remember. I asked what he usually did at night. He replied: "I write poetry." I left, cautioning him not to write poetry that evening, but to think hard about his whereabouts the night of the crime. When I returned, he met me cheerfully. He said that at times he worked as a candy butcher for a motion picture theater about an hour's ride from the scene of the burglary; that he had worked that night; that he always worked until 10:00 o'clock, and the crime having been committed at 9:00, it would have been impossible for him to be there. I got in touch with the theater owner. He kept a record of candy sales, he said, and his books would definitely show whether Charlie had worked that night. A few days later, he told me he could not locate the books, but was absolutely certain Charlie had worked, and would so testify. At the trial, I argued the law as well as the facts, to the jury and, incredible as it may seem today, read to the jury from a Supreme court opinion to prove the court was wrong in its rulings. The first trial was a disagreement. On the second trial, the boy was acquitted, entirely, I am sure, on the testimony of the motion picture man. That man, through this chance acquaintanceship, became a client of mine, and about five years later, he came into my office, obviously in distress, carefully closed the door and said guardedly: "You know, we have been moving the theater, and I found the books, Charlie did not work that night." What happened to Charlie? I saw him years later, and he seemed to be doing useful work.



Justice U. S. Schwartz

One of the earliest cases with which I was identified was the prosecution of the first cabaret operator in Chicago, Al Tierney, an alderman. He was charged with keeping open after 1:00 a.m., the closing hour in those days (and perhaps now, too; I wouldn't know.) One night, a photographer for the *Chicago Tribune,* which was against the administration of the then Mayor, Carter Harrison, came out to take pictures of the place as things went on after 1:00 a.m. He had a scuffle with the proprietor. *The Tribune* demanded prosecution of Tierney, but the administration stood pat. *The Tribune* then sued out a warrant on its own motion. I was sent to the 35th Street court to move for a non-suit, and I found stalwart opposition there in S. E. Thomasen, later Publisher of the *Chicago Times.* He was then a member of the firm of Shepard, McCormick and Thomasen, predecessor of the present Kirkland firm. (When we met in later years, we often talked about this case.) When the case came up, I explained to the court that at common law, the king controlled prosecutions, and his right to have a suit dismissed could not be denied. In this case, Jim McInerney, City Prosecutor, was king. But Thomasen argued otherwise, and the judge was nonplused. "You say one thing," he said to me, and to Thomasen, "You say another. Why do you fellows pass the buck to me? I'm going to send this case downtown." That phrase, "Pass the buck," was publicized all over the country and I think I actually got more publicity over this case than any other I tried. The case went downtown to the Chief Justice. Each time it was called I would report and take a non-suit, Thomasen would oppose, and the judge would continue the case. The captain of the district, a fine, upstanding policeman. Captain Nootbar, would send a report in writing to the City Prosecutor each morning of the late hours Tierney

was keeping, and those reports would be put in a drawer in the Prosecutor's desk. Some 160 reports were thus accumulated when, one day, the City Prosecutor discovered they had all been filched. He was sure they had gotten into the hands of a reporter. "My God," he said, "they will murder us in that paper tomorrow." The following morning, I opened the paper expecting to see the story spread across the front page. Instead, the headline read: "War in Europe." It was August 1, 1914. "Gosh!" the City Prosecutor said, "that's a lucky war!"

Saloons kept open after midnight, and dance halls after 2:00 a.m.—those were the big items in the press fifty years ago. One never saw an item of international affairs. Serbia, seat of the origin of the First World War, was known only as the country where Queen Draga was slain. Fifty years ago—we still had the lawyer of the broad-brimmed hat, flowing black necktie, the perennial candidate for public office, the eloquent orator reciting the Declaration of Independence. He was just beginning to disappear and in his place appeared the trim, industrious, hard-working lawyer who tried his case on the basis of thorough preparation and simple, clear statements to court and jury. Clarence Darrow was probably the last of that old type of great jury lawyer. I was associated with him in the trial of a civil case. Our client was sued on a note he had signed, but which he claimed was an accommodation for his co-maker, whose father was payee in the note. It looked to me like the kind of case that was a natural for a jury, but Darrow, the great jury lawyer, would have none of it. He insisted on trying the case before a judge. He had no feeling of omniscience in the jury, but we lost the case.

So much for the past. I talked this over with a friend of mine who said it was all right to reminisce, but that the audience would expect something more serious, too, from a judge. Recalling those days when our country seemed secure and impregnable, I cannot help thinking of the dire need that hovers over every aspect of our lives today—the orderly legal curbing of those vast powers which science has placed in man's hands. The modern state is viewed by some great scholars as composed of two contrary currents of emotion and thought. On the one hand, the state must commit its citizens to a strong prejudice in its own favor. To an enemy, present or prospective, a solid front must be organized, and the citizenry at times raised to a high pitch of patriotic fervor. On the other hand, within its own borders and among its own citizens, cooperation, understanding and even compassion must cement the ties binding them to a common interest. How then, in this view of the modern state can we establish legal institutions having universal authority? How achieve that day:

> When the common sense of most shall hold a fretful realm in awe,
> And the kindly earth shall slumber lapt in universal law?

That is a paradox for the legal mind, for men trained in law, in its origin, its history and its growth. Perhaps, some of these fine young lawyers of our fraternity may have an opportunity to build this new world order. But that is for the very few. Back of that, the nation must put its own house in order, and high on the calendar for that purpose, clamoring for renovation, is one room in that house, the place of justice. Consider one corner of that room—jury cases. In Chicago, 95% of those cases are disposed of before trial. Those who desire trial must bide their time, perhaps five, six, or as long as seven or eight years. What travesty! Yet, no reforms of any basic character have been made. I spoke a moment ago of how a nation, for its own self-preservation, must build in its citizens a strong prejudice for its own institutions. From that follows a pride in its traditional forms, and this may well be for the good of all. But it is vital that those institutions be worthy of our pride. One of my colleagues is fond of quoting a great theologian who said: "A life not re-examined is not worth living." The institutions and traditions of the law must be re-examined today. An institution for the composition of controversies which is side-tracked by 95% and more of those who would ordinarily invoke its use is suffering from a serious malady.

Ours is an old profession. Far back in the dawn of history, lawyers organized societies, composed disputes, and kept the peace of the community. No other profession has a literature to compare with ours. Not an occasion arises but that examples of the past may be brought to bear for the solution of a current problem. But to that must be added courage and a high constructive purpose to make the past serve the present, not to fetter it, and to restore the esteem which the legal profession deserves in the minds and hearts of a perplexed society. That means to strip oneself of what is meretricious and false, and to feel free to labor and produce that which the time and the particular task in hand demand. To quote Justice Hand, only is he free whose efforts are called out by what seems to him a good in itself—by the belief that he is contributing something authentically his.

This award is for me a token that in some small measure I have travelled that road, and it will ever be an inspiration to carry on.

NU BETA EPSILON ELECTS HIRSCHTICK

Nu Beta Epsilon National Law Fraternity, at its recent convention in Miami Beach, elected member Nathaniel B. Hirschtick of Chicago its Grand Chancellor for the ensuing year. Elected to national offices were the following members of the Chicago Bar: David S. Cohen, Regional Vice Grand Chancellor; Robert L. Hankin, Grand Master of the Exchequer; Edward G. Finnegan, Grand Master of the Rolls, and Benjamin M. Loiben, Grand Historian.

Member Robert L. Hankin received the Barnet Hodes Award for his outstanding services to the fraternity.

JUDGE HARRY G. HERSHENSON VISITS ISRAEL AND AFRICA

Member Judge Harry G. Hershenson of the Superior Court headed a large party of Chicagoans who left for Israel and for points in Europe sometime in July. The judge planned to revisit Italy where, as an army officer during World War II, he was the United States war governor of conquered territory in Italy and Africa, including the City of Milan. More than two million people were in Hershenson's administrative charge. The trip to Italy will be the judge's first journey there in sixteen years.

BOOK REVIEWS

THE EICHMANN KOMMANDOS, by Justice Michael A. Musmanno. MacRae Smith Company. 269 pp. $3.95.

Reviewed by BENJAMIN WEINTROUB

The reviewer may turn to any portion of this authentic and shocking record of human depravity to find irresistibly immediate and illustrative material long before editorial comment on the record is possible. Consider the following, for instance:

. . . Paul Blobel was the evil genius of the notorious Kiev massacre. Sometime in September, 1941, the Jews of that city were instructed to appear in the public square on the 29th of that month with all their belongings, since they were to be "resettled." They responded in multitudes, eager to rid themselves of a city bewildered and reeling under the battering fist of war. A long procession of trucks rolled up to haul them to the "resettlement" area, where they were immediately taken before the execution rifles. Never had Blobel as an architect planned and executed a building project so efficiently as he did this razing of human lives. The victims were spared long delays, the anguish of doubt, the inconveniences of lack of shelter and food, and worry as to what might happen to their property and valuables. . . .

And this:

. . . From Smolensk, Russia, he (General Erich Naumann) had sent Eichmann the reports before us. One of them related that during the month of November, 1941, his Einsatzgruppe B had conducted executions in sixteen different areas, resulting in the killing of 17,256 Jews, men and women—as well as the slaying of sixteen children in a children's home. Another report spoke of executions between March 6th and 30th, 1942, numbering thousands of persons. Although some of the deaths in this report were labeled as punishment for "theft," "attempted murder," "sabotage" and "spying," most of them were listed simply under the designation of "Jews," "gypsies," or "membership in the Communist Party." Naumann acknowledged that his Einsatzgruppe possessed two or three gas vans which "were used to exterminate human beings." . . .

Judge Musmanno was the presiding judge in the Nuremberg trial of 1946-47 (International Military Tribunal) appointed, in the American zone of occupation with two other American judges, to try twenty-three German murderers who, as Eichmann's emissaries, killed without opportunity for defense, indictments or charges, more than a million men, women, and children. The Kommandos, roving squads of action groups, known as *Einsatzgruppen,* under Eichmann's overall command, were divided into four groups and were to do murder in Latvia, Lithuania, Esthonia, all of the Ukraine, the territory adjacent to Moscow, Crimea, and the whole of the Caucasus area. Each raiding Einsatzgroup, fully equipped with slaughter equipment, was the size of a battalion. Its function was to follow in the wake of invading German armies immediately after the Wehrmacht had conquered enemy territory and to do wholesale murder upon non-combattants, Jews, who had lived in that area for generations. For efficiency purposes it was sub-divided into smaller units so that the exterminations could proceed with dispatch and alacrity. Each of the Kommandos was provided with bookkeepers and auditors who, at the end of the day rushed by wire, telephone, or by letter reports and statistics to Eichmann's office in Berlin totals of the bloody work. The round figure of a million people killed was arrived at by the prosecution at the trial, not from guess-work, but from the very records which the meticulous butchers kept and left undestroyed as they fled for safety into hiding anywhere in the sewers of their fatherland.

With only an occasional aside to express, in retrospect, the feeling of revulsion and horror that assailed him during the seven-month-long trial, Musmanno's recital of the evidence presented in court, the behavior of the defendants, and the testimony adduced is circumspect, explicit, and astonishingly unemotional. The general defense advanced by the barbarians was that they were fulfilling an order from on high, the "Fuehrer Order." All knew, however, that they were operating to assist in the realization of the Final Solution of the Jewish problem posed by the big trio of fiends—Hitler-Himmler-Eichmann. Each of the twenty-three defendants before the Tribunal was confronted with imperishable documents of their own extraordinary record in murders. (Defendant Hans Ohlendorf's detachment alone murdered ninety thousand Jews and gypsies.) Not a note of regret of the executions escaped from the men before the Tribunal. They claimed that it was always orders from on high in Berlin that impelled their horrible acts. Nowhere were there reports of failures to carry them out. The commanding general of the German Army in Simferopol, Crimea, for instance, demanded that ten thousand Jews were to be killed by Christmas (in less than a month's time from the holiday). The murderers obliged:

. . . In the early part of December, 1941, the commander of the German Eleventh Army operating in the Crimea informed General Ohlendorf that it was his wish that the Jews and gypsies, of whom there were about ten thousand in Simferopol, be

killed before Christmas. The order did not consternate Ohlendorf. On the mystic chords of memory no echo resounded in his ears of the Christmas carols he had heard in childhood, nor did he recall the message of Peace on Earth, Good Will toward Men. He transmitted the order to SS-Colonel Werner Braune, commanding Einsatzkommando 11B, who, also saw nothing incongruous in the prospect of mingling blood with the evergreen of Christmas trees and the golden recollections of the yuletide. The only difficulty confronting Braune was that he lacked enough men and equipment for so accelerated an action. However, he would do his best. He called on the army commander and explained that he wished to abide by his wishes but that he needed some assistance. Could he have a few men, some extra rifles, and enough ammunition to finish off ten thousand people? The army commander saw nothing unreasonable in the request and gladly promised him enough personnel, trucks, rifles and cartridges to accomplish the job. . . .

In the Poltava region when the invading military forces demanded good cream for the coffee needs of the army, the Kommandos killed 575 inmates of an asylum to provide enough or more cream for the German war machine. Never a child was spared; never a woman, an old man, or a teen-ager. The Kommandos had to fill quotas and the wires hummed the tidings to the master perpetrator and planner of the endless outrages, Adolf Eichmann, who sought to "solve forever" the Jewish problem.

There was the case of S.S. Colonel Ernst Biberstein, an ordained Lutheran minister who abandoned the church for the role of an extermination unit leader. His concept of human love may be gleaned from the following:

. . . He testified that he still had love for his fellow-man, and I asked him, "Do you think that you demonstrated that 'love of fellow-men' by letting these people go to their deaths without a word of comfort along religious lines, considering that you were a pastor? Did you demonstrate there a 'love of fellow-man'?"

And his unblushing answer was, "I didn't sin against the Commandments of Love."

A fairly good idea of Biberstein's concept of human love can be gained from his statement that as between inflicting death by firing squads and by means of the gas vans, he preferred using the latter because he found that the gas vans "were more pleasant for both parties." . . .

Fourteen of the more gory among the exterminators were condemned to death by hanging. More than half of same escaped this penalty, however, by commutation of their sentences. Others received long prison terms.

Eichmann's Kommandos affords, in my opinion, the best exposition of the horror that was Germany under Hitler. It is a record of viciousness unsurpassed in the annals of humanity. It should be read widely and read more than once for an appreciation of the gift that is civilization, freedom, human dignity, versus the contemptible "order" that the Nazis tried to inflict upon mankind. Musmanno in writing *Eichmann's Kommandos* won the gratitude of all who hold dear the precious values of humanity.

HELP WANTED

If your office is in need of an alert, recently admitted to the Illinois Bar young lawyer, eager to make good, the Decalogue Placement Bureau has just such a man for you.

If interested please telephone Michael Levin, chairman, ANdover 3-3186, who will gladly arrange an interview with the applicant.

ALEC E. WEINROB

Past president Alec E. Weinrob was elected vice president in charge of activities of Chicago Council for Great Books. The Council consists of one hundred and thirty two separate study groups.

MILTON H. MILLER

Member Milton H. Miller was appointed a special deputy in the Bureau of Liquidation, Department of Insurance, for the State of Illinois.

MARVIN JURON

Member Marvin Juron has been named president of the New York University Alumni Association, Chicago chapter.

ROSIN HEADS ANSHE EMET SYNAGOGUE

Member Meyer W. Rosin was elected to a third term as president of Anshe Emet Synagogue. Member Leon Silvertrust was elected senior vice president.

JEANNE E. BROWN

Member Jennie E. Brown is finishing her sixth term as president of the John Marshall Law School Alumni Association.

REELECTED JUDGE ADVOCATE

Member J. Henry Wolf was reelected Judge Advocate for the department of Illinois Disabled American Veterans at a recent convention of that organization.

CLASSMATES

By *IRVING J. SIEGAL*

John was a lawyer of great renown;
He could turn a case with smile or frown.
His office was furnished in modern style,
His desk unlittered by a single file.

His brain was agile to the inner core,
Unhampered by basic legal lore.
The story behind his license is drab;
He got it simply by his gift of gab.

No client quivered any time that he
Demanded and got a staggering fee;
For one dared abuse the concession
That he was the king of all his profession.

In an aged building not far away
That may be a parking lot any old day,
Tom could be found in his office-at-law,
Where rent and eviction were always a draw.

In all the city, nowhere could be found
A lawyer whose knowledge was more profound.
Though he prepared each case with amazing precision
He was never able to win a decision.

His poverty increased as the years went by,
And little by little he ceased to try,
Till he passed unnoticed like a winter cloud
And went to his grave, a pauper cum laude.

From **A Lawyer's Versus,**
Published with the permission of the author,
member Irving J. Siegal.

The Decalogue Journal edited by Benjamin Weintroub is one of the finest assets of our Society. It adds lustre and prestige not only to our organization, but to the entire legal profession as well.

Judge Julius H. Miner

GREAT BOOKS

. . . We believe that the reduction of the citizen to an object of propaganda, private and public, is one of the greatest dangers to democracy. A prevalent notion is that the great mass of the people cannot understand and cannot form an independent judgment upon any matter; they cannot be educated, in the sense of developing their intellectual powers, but they can be bamboozled. The reiteration of slogans, the distortion of the news, the great storm of propaganda that beats upon the citizen twenty-four hours a day all his life long mean either that democracy must fall a prey to the loudest and most persistent propagandists or that the people must save themselves by strengthening their minds so that they can appraise the issues for themselves.

Great books alone will not do the trick; for the people must have the information on which to base a judgment as well as the ability to make one. In order to understand inflation, for example, and to have an intelligent opinion as to what can be done about it, the economic facts in a given country at a given time have to be available. Great books cannot help us there. But they can help us to that grasp of history, politics, morals, and economics and to that habit of mind which are needed to form a valid judgment on the issue. Great books may even help us to know what information we should demand. If we knew what information to demand we might have a better chance of getting it . . .

From *THE GREAT CONVERSATION*
By Robert Maynard Hutchins

Nazi Judges Told to Resign

A bill urging former Nazi judges and prosecutors involved in capital cases to resign from the posts they now hold in the West German judiciary, coupled with a warning that if the resignations were not forthcoming they would be forced out by legislation that would simultaneously deprive them of possible trial, was passed by the West German Bundestag with a single dissent.

The bill affects an estimated 72 members of the judiciary.

Judge David Lefkovits, Chairman

Member Judge David Lefkovits of the Municipal Court, Decalogue Society financial secretary, was the honorary chairman of the South Shore Hebrew Congregation Israel Bond dinner on July 14th. More than fifty thousand dollars of Israel bonds were sold at the affair.

The President, the officers, and the Board of Managers of The Decalogue Society of Lawyers extend to fellow members, their families, and to the entire legal profession their warmest wishes for a very Happy New Year.

SORROW

The Decalogue Society of Lawyers announces with deep regret the deaths of the following members:

Sema B. Belgrade
Irving Eisenman
Benjamin Samuels

BOOK BURNING

By JACOB BURCK *Courtesy: CHICAGO SUN-TIMES*

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THE DECALOGUE JOURNAL

A Publication of The Decalogue Society of Lawyers

180 WEST WASHINGTON STREET
CHICAGO 2, ILLINOIS

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Chicago, Ill.

Decalogue Legal Education Committee Begins 1961 Program

This series of legal lectures begins the fourth year under the present chairman of the Legal Education Committee of The Decalogue Society of Lawyers, Elmer Gertz. The series is of special significance because of the important new legislation enacted at the last session of the Illinois General Assembly. The first lectures in the series summarize the more important new laws and give their far-reaching implications for all.

Only those lectures to be given before January 1, 1962 are listed below. Later this year another announcement will be sent to the membership listing the remainder of the series which will go on until June 16, 1962.

Mr. Harry G. Fins will speak at a luncheon at the Chicago Bar Association, on Friday, September 8, at 12:00 noon on "1961 Illinois Legislation Affecting the Practice of Law."

All other meetings will be held on Wednesdays beginning at 1:00 p.m. at the Decalogue headquarters, 180 W. Washington Street.

Sept. 27,
CHANGES IN THE CONSUMER CREDIT LAW. Marvin M. Victor

Oct. 4,
THE NEW CRIMINAL CODE. Charles A. Bellows

Four lectures on Personal Injury Law under the chairmanship of Fred Lane.

Oct. 11,
THE MEDICAL ASPECTS OF A PERSONAL INJURY CASE. Dr. I. Joshua Speigel

Oct. 18,
THE NEW TRENDS IN PRODUCTS LIABILITY CASES. Robert L. Brody

Oct. 25,
THE PRE-TRIAL AND TRIAL OF PERSONAL INJURY CASES. Judge Abraham L. Marovitz

Nov. 1,
BASIC PRINCIPLES AND DEVELOPMENTS IN ADMIRALTY LAW. Louis L. Silverman

A lecture on Probate Law

Nov. 8,
NEW DEVELOPMENTS IN PROBATE LAW. Nat M. Kahn

Four lectures on Matrimonial Law

Nov. 15,
PROPERTY SETTLEMENT AGREEMENTS IN MATRIMONIAL DISPUTES. Aaron H. Cohn

Nov. 22,
TAXATION PROBLEMS IN MATRIMONIAL DISPUTES. Paul G. Annes

Nov. 29,
CURRENT STATUTORY DEVELOPMENTS IN MATRIMONIAL LAW IN THE U.S. WITH EMPHASIS ON ILLINOIS. Stanton L. Ehrlich

Dec. 6,
CURRENT CASE LAW DEVELOPMENTS IN MATRIMONIAL LAW IN THE U.S. WITH EMPHASIS ON ILLINOIS. Meyer Weinberg

A lecture on Adoption Law

Dec. 13,
ILLINOIS ADOPTION LAW AND PRACTICE. Raymond I. Suekoff

The series will resume on Wednesday, Jan. 3, 1962 and will proceed until June, 1962. Further particulars will be given later.